

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**ZACK WARD, ET AL.,**

Plaintiffs,

v.

**APPLE INC.,**

Defendant.

Case No. 12-cv-05404-YGR

**ORDER GRANTING RULE 56(d) MOTION  
AND DEFERRING RULING ON MOTION FOR  
SUMMARY JUDGMENT**

Re: Dkt. No. 78


On February 2, 2016, defendant Apple Inc. (“Apple”) moved for summary judgment on the issue of market definition. (Dkt. No. 78.) On February 16, 2016, plaintiffs filed a combined opposition brief and Federal Rule of Civil Procedure 56(d) request seeking the opportunity to complete discovery relating to the motion before the Court rules thereon. (Dkt. No. 86.)

The Court notes that it has been fully within plaintiffs’ discretion to conduct independent investigations and build a factual record regarding their theory of the case even absent direct discovery from Apple in the more than three years since this case was filed. Nevertheless, out of an abundance of caution, the Court finds it prudent to evaluate the present motion on a more fulsome factual record to the extent plaintiffs are able to identify additional relevant facts in discovery. Thus, plaintiffs’ Rule 56(d) motion is **GRANTED** and the Court defers ruling on defendant’s pending motion for summary judgment to allow plaintiffs a measure of additional time to conduct discovery related to the motion and the subject matter specifically identified in the Declaration of Rachele R. Rickert in Support of their Rule 56(d) Motion. (Dkt. No. 92 ¶¶ 41-60.) Apple may choose to conduct its own discovery relating to the motion during this time period, including depositions of the named plaintiffs.

1 Plaintiffs shall complete this additional discovery and file their new brief opposing Apple's  
2 summary judgment motion by **August 2, 2016**, including a revised separate statement of material  
3 facts to the extent additional relevant evidence is submitted. Defendant's reply is due fourteen  
4 (14) days after the opposition brief is filed. The Court shall set a further hearing date if necessary  
5 upon review of the additional briefing.

6 **IT IS SO ORDERED.**

7 Dated: April 4, 2016

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9 YVONNE GONZALEZ ROGERS  
10 UNITED STATES DISTRICT COURT JUDGE  
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